Message Text

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46/15

ORIGIN PA-02

INFO OCT-01 ISO-00 AS-01 SS-15 INR-07 H-02 EUR-12 EA-10

AF-06 NEA-09 ARA-10 SP-02 IO-10 L-02 /089 R

DRAFTED BY PA/FOI:DBROWN:MS APPROVED BY PA-W.D. BLAIR, JR.

PA - C. C. LAISE

S/S - MR.K.E. MALMBORG

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S/P MR. P. SWIERS

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TO ALL DIPOLMATIC AND CONSULAR POSTS PRIORITY

UNCLAS STATE 036519

INFORM CONSULS

C O R R E C T E D COPY (PARA 9 LINE 14 AND PARA 11 SUBPARA 6 LINE 13 OMITTED)

MO. 11652: N/A TAGS: OGEN

SUBJECT: PROCEDURES FOR IMPLEMENTING THE AMENDED FREEDOM

OF INFORMATION ACT

1. ON FEBRUARY 19, 1975, A SERIES OF IMPORTANT AMENDMENTS TO THE FREEDOM OF INFORMATION ACT (5 USC 552) WILL ENTER INTO EFFECT. THE CHANGES IN THE LAW ARE DESIGNED TO IN-UNCLASSIFIED

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CREASE THE AVAILABILITY OF OFFICIAL INFORMATION TO THE PUBLIC, AND TO MINIMIZE THE TIME REQUIRED FOR OBTAINING IT. THEY WILL REQUIRE OF THIS DEPARTMENT AND ALL AGENCIES AND OFFICES OF THE FEDERAL EXECUTIVE AN INCREASED EFFORT TO

IMPLEMENT FULLY THE TERMS OF THE ACT.

2.TO GIVE EFFECT TO THESE CHANGES IN THE LAW, AMENDED REGULATIONS ON AVAILABILITY OF RECORDS HAVE BEEN PREPARED AND WILL BE PUBLISHED AND CIRCULATED SEPARATELY. EVERY OFFICER OF THE DEPARTMENT AND THE FOREIGN SERVICE MUST BE FULLY FAMILIAR WITH THESE REGULATIONS. THE GUIDELINES AND PROCEDURES WHICH THEY SET OUT ARE SUMMARIZED IN THIS PAPER, AND WILL TAKE EFFECT AS OF FEBRUARY 19.

3. AS BEFORE, THE AMENDED ACT PROVIDES THAT ANY PERSON REQUESTING COPIES OF GOVERNMENT DOCUMENTS MUST BE GIVEN THEM UNLESS THE DOCUMENTS CLEARLY FALL WITHIN THE SPECIFIC CATEGORIES OF MATERIAL WHICH MAY BE WITHHELD, IF NECESSARY,

IN THE PUBLIC INTEREST.

- 4. TWO POINTS MUST CONTINUE TO BE KEPT CLEARLY IN MIND: FIRST, NO OFFICIAL RECORD MAY BE WITHHELD WHEN REQUESTED UNLESS IT FALLS WITHIN ONE OF THE CATEGORIES THAT MAY BE EXEMPTED FROM DISCLOSURE UNDER THE ACT. SECOND, THE MERE FACT THAT THE DOCUMENT FALLS WITHIN ONE OF THESE CATEGORIES DOES NOT MEAN IT MUST OR SHOULD BE WITHHELD, BUT ONLY THAT IT MAY BE WITHHELD IF THERE IS STILL COMPELLING REASON IN THE PUBLIC INTEREST TO DO SO.
- 5. THE DEPARTMENT IS AWARE OF WIDESPREAD CONCERN THAT THE ACT MIGHT REDUCE ACCESS TO CONFIDENTIAL INFORMATION FROM FOREIGN SOURCES AND ENCOURAGE OVERLY CAUTIOUS REPORTING. HOWEVER, THE STATUTORY EXEMPTION FOR INFORMATION RECEIVED IN CONFIDENCE SHOULD BE APPLICABLE TO SUCH INFORMATION FROM ALL FOREIGN SOURCES. MOREOVER, THE STATUTE REQUIRES THE COURTS TO APPLY THE STANDARDS OF EXECUTIVE ORDER 11652, WHICH EXPRESSLY PROVIDES FULL PROTECTION FOR INFORMATION RECEIVED IN CONFIDENCE FROM FOREIGN GOVERNMENTS AND INTERNATIONAL ORGANIZATIONS AND IS PROPERLY CLASSIFIED. THEREFORE CARE IS ESSENTIAL IN ASSIGNING CORRECT CLASSIFICATION UNCLASSIFIED

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AND DOWNGRADING INDICATORS IN ACCORDANCE WITH E.O. 11652
AND IN SPECIFYING WHERE INFORMATION WAS RECIEVED IN
CONFIDENCE. IT MUST ALSO BE RECALLED THAT SUCH DISTRIBUTION INDICATORS AS NODIS, EXDIS, LIMDIS, STADIS, SY
CHANNEL AND OFFICIAL INFORMAL DO NOT HAVE LEGAL STANDING
OR PRECLUDE PUBLIC RELEASE ONCE A DOCUMENT IS AUTOMATICALLY OR OTHERWISE DECLASSIFIED.

- 6. THE 1974 CONGRESSIONAL ACTION CHANGED THE ACT IN 11 PRINCIPAL RESPECTS. IN THE CHANGES OF GREATEST SIGNIFICANCE TO THIS DEPARTMENT, THE NEW LAW
- 1. AUTHORIZES DISTRICT COURTS TO REVIEW THE VALIDITY OF

CLASSIFICATION OF EXECUTIVE BRANCH DOCUMENTS REQUESTED UNDER THE ACT.

- 2. SETS TIME LIMITS OF 10 WORKING DAYS FOR RESPONSE TO THE ORIGINAL REQUEST AND 20 WORKING DAYS FOR FINAL ACTION ON AN APPEAL, WITH A MAXIMUM TOTAL EXTENSION OF THE PROCESS BY 10 FURTHER WORKING DAYS ALLOWABLE IN CERTAIN SPECIFIED CIRCUMSTANCES.
- 3. MANDATES GREATER AVAILABILITY OF INVESTIGATIVE FILES.
- 4. MAKES THE EXECUTIVE OFFICE OF THE PRESIDENT, IN-CLUDING THE NATIONAL SECURITY COUNCIL, SUBJECT TO THE PROVISIONS OF THE ACT.
- 5. PROVIDES FOR PUNITIVE ACTION WHEN AN EMPLOYEE'S CONDUCT IN WRONGLY DENYING DOCUMENTS CAN BE PROVED TO BE "ARBITRARY AND CAPRICIOUS".
- 7. ON JUDICIAL REVIEW: COURTS ARE EMPOWERED BUT NOT REQUIRED TO REVIEW IN CAMERA CLASSIFIED DOCUMENTS WHICH HAVE BEEN REQUESTED BY THE PUBLIC AND DENIED BY THE EXECUTIVE BRANCH, AND TO DECIDE WHETHER THEY SHOULD REMAIN CLASSIFIED. THIS MEANS THAT SENIOR DEPARTMENT OFFICIALS WILL BE CALLED ON TO EXECUTE AFFIDAVITS IN SUPPORT OF CLASSIFICATION OF CONTESTED DOCUMENTS. COURTS MAY RELY OF THESE AFFIDAVITS IN LIEU OF EXAMINATION OF THE RECORDS THEMSELVES.

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- 8. THE AMENDMENT ON TIME LIMITS MEANS THAT SUIT COULD BE BROUGHT AGAINST THE DEPARTMENT BEFORE ACTION CAN BE COMPLETED ON LARGE AND COMPLEX REQUESTS. AGENCIES MUST WORK WITH REQUESTERS TO HELP THEM MORE SHARPLY DEFINE THEIR REQUESTS OR, IN PRACTICAL TERMS, BREAK THEM DOWN INTO SUB-REQUESTS. AT THE SAME TIME, EVERY EFFORT MUST BE MADE TO COMPLETE ACTION ON THE REQUESTS AS PROMPTLY AS POSSIBLE, EVEN IF THE 10-DAY DEADLINE IS NOT MET.
- 9. ON PUNITIVE ACTION AGAINST EMPLOYEES FOR "ARBITRARY AND CAPRICIOUS ACTIONS" IN THE HANDLING OF CASES, THE ACT STATES:

"WHENEVER THE COURT ORDERS THE PRODUCTION OF ANY AGENCY RECORDS IMPROPERLY WITHHELD FROM THE COMPLAINANT AND ASSESSES AGAINST THE UNITED STATES REASONABLE ATTORNEY FEES AND OTHER LITIGATION COSTS, AND THE COURT ADDITIONALLY ISSUES A WRITTEN FINDING THAT THE CIRCUMSTANCES SURROUNDING THE WITHHOLDING RAISE QUESTIONS WHETHER AGENCY PERSONNEL ACTED ARBITRARILY OR CAPRICIOUSLY WITH RESPECT TO THE WITHHOLDING, THE CIVIL SERVICE

COMMISSION SHALL PROMPTLY INITIATE A PROCEEDING TO DETERMINE WHETHER DISCIPLINARY ACTION IS WARRANTED AGAINST THE OFFICER OR EMPLOYEE WHO WAS PRIMARILY RESPONSIBLE FOR THE WITHHOLDING. THE COMMISSION, AFTER INVESTIGATION AND CONSIDERATION OF THE EVIDENCE SUBMITTED, SHALL SUBMIT ITS FINDINGS AND AND RECOMMENDATIONS TO THE ADMINISTRATIVE AUTHORITY

OF THE AGENCY CONCERNED AND SHALL SEND COPIES OF THE FINDINGS AND RECOMMENDATIONS TO THE OFFICER OR EMPLOYEE OR HIS REPRESENTATIVE. THE ADMINISTRATIVE AUTHORITY SHALL TAKE THE CORRECTIVE ACTION THAT THE COMMISSION RECOMMENDS."

10. THE GENERAL COUNSEL OF THE CIVIL SERVICE COMMISSION, IN INTERPRETING THIS AMENDMENT, HAS SAID THAT WHILE THE COMMISSION WILL BE "MINDFUL OF THE DUE PROCESS RIGHTS OF THE EMPLOYEES" AND ANY CSC PROCEDURES WILL ACCOMODATE DUE PROCESS REWUIREMENTS, "WANTON DISREGARD OF THE LAW IS NOT UNCLASSIFIED

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TO BE COUNTENANCED."

- 11. UNDER REVISED DEPARTMENT REGULATIONS BECOMING EFFECTIVE FEBRUARY 19, PUBLIC REQUESTS FOR DECLASSIFICATION REVIEW AND RELEASE OF DOCUMENTS INCLUDING PARTS OF DOCUMENTS, WHERE DELETION ARE NECESSARY ARE TO BE HANDLED AS FOLLOWS:
- 1. THE FREEDOM OF INFORMATION STAFF, BUREAU OF PUBLIC AFFAIRS (PA/FOI), WILL RECEIVE REQUESTS FOR RECORDS UNDER THE ACT AND WILL CAUSE A SEARCH FOR THEM TO BE MADE IN THE FOREIGN AFFAIRS DOCUMENT AND REFERENCE CENTER (FADRC), ONE OR MORE OF THE 32 AUTHORIZED INDEPENDENT FILES IN THE DEPARTMENT AND/OR THE BUREAU HAVING FUNCTIONAL RESPONSIBILITY FOR THE

SUBJECT MATTER OF THE REQUEST. OTHER OFFICES OF THE DEPARTMENT RECEIVING REQUESTS FOR DOCUMENTS WHICH THEY BELIEVE TO FALL UNDER THE TERMS OF THE FREEDOM OF INFORMATION ACT SHALL REFER THE REQUESTS IMMEDIATELY TO PA/FOI. THIS INCLUDES REQUESTS REFERRED FROM OTHER AGENCIES OF GOVERNMENT IN WHICH COPIES OF DOCUMENTS MAY OR MAY NOT ACCOMPANY THE REQUEST FOR DECLASSIFICATION REVIEW. ALSO INCLUDED ARE REQUESTS RECEIVED BY POSTS ABROAD WHEN THEY ARE NOT TO BE HANDLED AT THE POSTS (SEE THE LAST SECTION - "REQUESTS ADDRESSED TO OVERSEAS POSTS").

2. WHEN THE RECORD IS LOCATED OR RECEIVED BY REFERRAL FROM ANOTHER AGENCY OR FROM A POST ABROAD, PA/FOI WILL DETERMINE WHAT OFFICE HAS PRIMARY RESPONSI-

BILITY FOR ITS REVIEW, WILL FIX A DEADLINE FOR COMPLETION OF THAT REVIEW, AND WILL TELEPHONE THE ACTION OFFICE AND REQUEST THAT THE RECORD BE PICKED UP AT THE EARLIEST POSSIBLE MOMENT. THE NORMAL DEADLINE FOR COMPLETING ACTION ON A REQUEST IS 10 WORKING DAYS FROM THE TIME IT WAS RECEIVED IN PA/FOI. AN EXTENSION OF UP TO 10 WORKING DAYS MAXIMUM MAY BE

AUTHORIZED ONLY BY THE DIRECTOR, FREEDOM OF INFORMATION STAFF (PA/FOI), IN CERTAIN CIRCUMSTANCES, UNCLASSIFIED

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DESCRIBED IN THE LAW AND DEPARTMENT REGULATIONS.

- 3. THE OFFICE TO WHICH THE RECORD HAS BEEN REFERRED SHALL IMMEDIATELY NOTIFY THE DIRECTOR OF PA/FOI (AGAIN THE TELEPHONE IS SUGGESTED) IF IT CANNOT ACCEPT THE RESPONSIBILITY FOR ACTION AND SHALL 0E RESPONSIBLE FOR DETERMINING IN CONSULTATION WITH PA/FOI AND THE OTHER BUREAU(S) CONCERNED WHICH BUREAU(S) DOES HAVE THAT RESPONSIBILITY, FOR TRANSFERRING ACTION THERE IMMEDIATELY, AND FOR CONFIRMING THE TRANSFER TO PA/FOI IN WRITING.
- 4. THE OFFICE WHICH ACCEPTS RESPONSIBILITY FOR REVIEW SHALL EXAMINE THE RECORD AND, IN CONSULTATION WITH THE ASSISTANT LEGAL ADVISER DESIGNATED TO PROVIDE LEGAL ADVICE TO THAT OFFICE, DETERMINE WHICH, IF ANY, OF THE NINE EXEMPTIONS OF THE ACT ARE APPLICABLE (NO OTHER GROUND FOR DENIAL WILL SUFFICE) AND CONSIDER WHETHER SUCH EXEMPTION, IF APPLICABLE, SHOULD BE CLAIMED.
- 5. IF THERE IS NO APPLICABLE EXEMPTION, OR IT IS
 DETERMINED NOT TO EXERCISE AN EXEMPTION, THE RESPONSIBLE OFFICER (WHO MUST HAVE THE APPROPRIATE CLASSIFYING/DECLASSIFYING AUTHORITY) SHALL INFORM THE

DIRECTOR OF PA/FOI IN WRITING. PA/FOI WILL INFORM THE REQUESTER AND BE RESPONSIBLE FOR THE COLLECTION OF ANY FEES AND THE RELEASE OF THE RECORD.

6. WHEN A REQUEST FOR A DEPARTMENT RECORD ENCOMPASSES CWASSIFIED INFORMATION ORIGINATED BY ANOTHER DEPARTMENT OR AGENCY THE REQUEST FOR THAT INFORMATION SHALL BE REFERRED TO THE ORIGINATING DEPARTMENT OR AGENCY. THE REQUESTER SHALL BE ADVISED OF THE DATE AND ADDRESSEE OF THE REFERRAL. CLASSIFIED INFORMATION INVOLVING INTELLIGENCE SOURCES AND METHODS IS SUBJECT TO THE CONTROL OF THE DIRECTOR, CENTRAL INTELLIGENCE AGENCY; FBI INFORMATION (WHETHER OR NOT CLASSIFIED) IS SUBJECT TO THE CONTROL OF THE FBI;

RESTRICTED DATA" WHICH IS SUBJECT TO THE CONTROL UNCLASSIFIED

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OF THE ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION OR THE NUCLEAR REGULATORY COMMISSION, AS THE CASE MAY BE, AND NATIONAL SECURITY COUNCIL DOCUMENTS ARE SUBJECT TO THE CONTROL OF THE COUNCIL. THE BUREAU OF INTELLIGENCE AND RESEARCH SHALL BE CONSULTED ON

RECORDS WHICH APPEAR TO BE IN THE FIRST CATEGORY; THE OFFICE OF SECURITY SHALL BE CONSULTED ON RECORDS WHICH APPEAR TO BE IN THE SECOND CATEGORY, AND THE EXECUTIVE SECRETARIAT SHALL BE CONSULTED ON RECRODS WHICH APPEAR TO BE IN THE LAST CATEGORY. REQUESTS FOR DOCUMENTS OF OTHER DEPARTMENTS OR AGENCIES IN THE FILES OF THE DEPARTMENT OF STATE WHICH ARE NOT RECORDS OF THE DEPARTMENT OF STATE (SUCH AS FBI REPORTS) SHALL BE REFERRED TO THE APPROPRIATE DEPARTMENT OR AGENCY WHETHER OR NOT CLASSIFIED. THE REQUESTER SHALL BE ADVISED OF THE DATE AND ADDRESSEE OF THE REFERRAL.

- 7. IF THE RESPONSIBLE OFFICE BELIEVES THAT ONE OR MORE EXEMPTIONS IS APPLICABLE AND SHOULD BE EXERCISED, IT SHALL INFORM THE DIRECTOR OF PA/FOI IMMEDIATELY AND SHALL COMPLETE WHATEVER COORDINATION WITHIN THE DEPARTMENT OR WITH OTHER AGENCIES INCLUDING THE NATIONAL SECURITY COUNCIL IS REQUIRED.
- 8. AFTER INFORMING THE DIRECTOR OF PA/FOI OF ITS INTENTION TO RECOMMEND DENIAL OF A REQUESTED RECORD, THE RESPONSIBLE OFFICE SHALL SEND ITS RECOMMENDATION IN WRITING TO THE DESIGNATED FREEDOM OF INFORMATION OFFICER OF THE BUREAU WITH SUPERVISORY RESPONSIBILITY.
- 9. THAT FREEDOM OF INFORMATION OFFICER SHALL CONSULT WITH THE DIRECTOR OF PAKFOI BEFORE MAKING HIS DECISION ON THE RECOMMENDATION TO DENY A RECORD.

10. IF THE BUREAU FREEDOM OF INFORMATION OFFICER DECIDES TO DENY A RECORD, HE SHALL SO ADVISE THE REQUESTER DIRECTLY, IN WRITING, AND SEND A COPY OF THE DENIAL LETTER TO PA/FOI. THIS SHALL BE CONSIDERED THE INITIAL DENIAL BY THE DEPARTMENT OF STATE. NO RECORD UNCLASSIFIED

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THAT APPEARS TO BE GERMANE TO THE REQUEST SHALL BE DENIED WITHOUT NOTIFICATION TO THE REQUESTER. THE DENIAL LETTER MUST BE SENT WITHIN 10 WORKING DAYS FROM THE DATE THE REQUEST IS RECEIVED BY PA/FOI, UNLESS THE DIRECTOR OF PA/FOI GRANTS AN EXTENSION OF TIME.

11. THE DENIAL LETTER SHALL STATE THE EXEMPTION OR EXEMPTIONS CLAIMED, THE REASONS FOR DENIAL, AND THE FACT THAT THE DENIAL MAYUBE APPEAWED TO THE DEPARTMENT'S COUNCIL ON CLASSIFICATION POLICY. A COPY OF THE DEPARTMENT'S REGULATIONS ON APPEALS SHALL BE ENCLOSED WITH IT

12. IF A REQUEST IS DENIED IN WHOLE OR IN PART BUT THE

RESPONSIBLE OFFICE IS PREPARED TO GIVE FURTHER CONSIDERATION TO RELEASE OF THE REQUESTED DOCUMENT(S), THE LETTER SHALL ALSO STATE THIS FACT AND INDICATE THE DATE BY WHICH THIS FURTHER CONSIDERATION IS EXPECTED TO BE COMPLETED. WHEN IT IS NOT POSSIBLE TO COMPLETE SUBSTANTIVE REVIEW OF THE CLASSIFICATION OF THE RECORDS WITHIN THE TIME ALLOCATED BY THE DIRECTOR BF PAFOI, THE LETTER SHALL SO STATE AND SHALL INDICATE THAT THE REVIEW IS CONTINUING AND WHEN IT WILL BE COMPLETED

13. IF THE FREEDOM OF INFORMATION OFFICER DECIDES THAT THE REQUESTED RECORDS WILL NOT BE DENIED, HE SHALL SO INFORM THE DIRECTOR OF PA/FOI IN WRITING, AND THIS DECISION MUST BE MADE AWSO WITHIN THE TIME SPECIFIED BY THE DIRECTOR OF PA/FOI.

14. WHEN AN APPEAL OF AN INITIAL DENIAL IS MADE BY THE REQUESTER THE DIRECTOR OF PA/FOI WILL ASK THE DENYING FREEDOM OF INFORMATION OFFICER TO CONSULT HIS DESIGNATED LEGAL ADVISER AND ARRIVE AT A POSITION WHICH THE RESPONSIBLE OFFICER WILL BE PREPARED TO DEFEND BEFORE THE COUNCIL ON CLASSIFICATION POLICY.

15. THE COUNCIL ON CLASSIFICATION POLICY SHALL VOTE TO UPHOLD OR REVERSE THE INITIAL DENIAL, AND THERE SHALL BE A WRITTEN RECORD OF THE REASONS FOR ITS DECISIONS UNCLASSIFIED

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AND THE VIEWS OF EACH MEMBER OR DELEATE PARTICIPATING IN THE DECISION.

16. THE COUNCIL'S DECISION SHALL BE COMMUNICATED IN WRITING TO THE REQUESTER BY LETTER FROM ITS CHAIRMAN (THE ASSISTANT SECRETARY OF STATE FOR PUBLIC AFFAIRS), WITHIN 20 WORKING DAYS FROM RECEIPT OF THE APPEAL IN THE OFFICE OF THE CHAIRMAN. THE DIRECTOR OF PA/FOI WILL ADVISE THE COUNCIL WHETHER AN EXTENSION OF THE 20 WORKING DAY PERIOD, BY NOT MORE THAN 10 WORKING DAYS, MAY BE AVAILABLE IN THE PARTICULAR CASE.

17. IF THE COUNCIL'S DECISION IS TO WITHHOLD, THE LETTER SHALL IDENTIFY THE EXEMPTION OR EXEMPTIONS EXERCISED,

AND THE REASON, AND, IF THE COUNCIL IS PREPARED TO GIVE FURTHER CONSIDERATION NOTWITHSTANDING EXPIRATION OF THE TIME ALLOCATED FOR DECISION, THE LETTER SHALL SO STATE AND INDICATE WHEN THAT CONSIDERATION IS EXPECTED TO BE COMPLETED.

REQUESTS ADDRESSED TO OVERSEAS POSTS

- 1. ANY POST RECEIVING A REQUEST FOR RECORDS WHICH IT HAS REASON TO BELIEVE IS INTENDED TO BE A REQUEST UNDER THE FREEDOM OF INFORMATION ACT SHALL SEND THAT REQUEST BY THE FASTEST MEANS AVAILABLE TO THE DEPARTMENT, ATTENTION: DIRECTOR PA/FOI.
- 2. THE 10 WORKING DAY PERIOD ALLOWED FOR RESPONSE TO SUCH REQUESTS WILL NOT BE CONSIDERED TO HAVE BEGUN UNTIL THE REQUEST HAS BEEN RECEIVED BY PA/FOI.
- 3. IN THE CASE OF A REQUEST FOR A RECORD WHICH IS AVAILABLE ONLY TO THE POST, THE POST SHALL UNLESS IT ACTS IN ACCORDANCE WITH PARAGRAPH 4., BELOW FORWARD A COPY OF THE REQUESTED RECORD WITH THE REQUEST, TO THE DIRECTOR OF PA/FOI.
- 4. A POST RECEIVING A REQUEST FOR A RECORD IN ITS POSSE-SION MAY REVIEW THE REQUESTED RECORD AND, IF IT IS UNCLASSIFIED, MAY RELEASE IT DIRECTLY TO THE REQUESTER UNCLASSIFIED

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AND INFORM THE DIRECTOR OF PA/FOI OF SUCH ACTION TAKEN. IF THE RECORD IS CLASSIFIED, OR IF THE POST FOR ANY REASON BELIEVES THE REQUEST SHOULD BE DENIED, IT SHOULD ADVISE THE DEPARTMENT (ATTENTION PA/FOI)(IMMEDIATELY.

INQUIRIES CONCERNING THESE PROCEDURES SHOULD BE ADDRESSED TO THE FREEDOM OF INFORMATION STAFF, BUREAU OF PUBLIC AFFAIRS (PA/FOI). MAW

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<< END OF DOCUMENT >>

Message Attributes

Automatic Decaptioning: X Capture Date: 26 AUG 1999 Channel Indicators: n/a

Current Classification: UNCLASSIFIED

Concepts: n/a Control Number: n/a Copy: SINGLE Draft Date: 18 FEB 1975 Decaption Date: 01 JAN 1960 Decaption Note: Disposition Action: n/a Disposition Action: n/a
Disposition Approved on Date:
Disposition Authority: n/a
Disposition Case Number: n/a
Disposition Comment:
Disposition Date: 01 JAN 1960
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1975STATE

Document Number: 1975STATE036519 Document Source: ADS Document Unique ID: 00 Drafter: PA/FOI:DBROWN:MS

Enclosure: n/a Executive Order: N/A Errors: n/a

Film Number: D750059-0613

From: STATE

Handling Restrictions: n/a

Image Path:

Legacy Key: link1975/newtext/t19750287/baaaagrp.tel

Line Count: 421

Locator: TEXT ON-LINE, TEXT ON MICROFILM

Office: ORIGIN PA

Original Classification: UNCLASSIFIED Original Handling Restrictions: n/a Original Previous Classification: n/a

Original Previous Handling Restrictions: n/a

Page Count: 8

Previous Channel Indicators: Previous Classification: n/a Previous Handling Restrictions: n/a Reference: n/a Review Action: RELEASED, APPROVED Review Authority: ElyME

Review Comment: n/a Review Content Flags: Review Date: 16 MAY 2003

Review Event:

Review Exemptions: n/a
Review History: RELEASED <16 MAY 2003 by McShalBA>; APPROVED <14 JAN 2004 by ElyME>

Review Markings:

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 05 JÚL 2006

Review Media Identifier: Review Referrals: n/a Review Release Date: n/a Review Release Event: n/a **Review Transfer Date:** Review Withdrawn Fields: n/a

Secure: OPEN Status: NATIVE Subject: n/a TAGS: OGEN

To: ALL DIPOLMATIC AND CONSULAR POSTS

Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 05 JUL 2006